

**HIGH COURT OF TRIPURA**  
**AGARTALA**

**W.P(C) No.813/2017**

**TRIPURA HILL DEVELOPMENT CO. LTD**

A company incorporated under the provisions of the Companies Act, 1956 and having its registered Office at 29, Old Kali Bari Road, Krishnanagar, Post Office - Agartala, District- West Tripura, Pin Code- 799001, Represented by its Managing Director, Nupur Bhattahcarjee (Moitra), W/o- Dr. Kulashekhar Bhattacharjee, resident at 29, Old Kalibari Road, Krishnanagar, P.O.- Agartala, P.S. West Agartala, District- West Tripura, Tripura, Pin Code- 799001.

..... *Petitioner(s)*.

Vrs.

**1.THE STATE OF TRIPURA**

Represented by THE CHIEF SECRETARY, Government of Tripura, Agartala, New Secretariat Complex, PO- Kunjaban, PS - Capital Complex, District- West, Tripura, Pin Code- 799006.

**2.THE PRINCIPAL SECRETARY**

to the Government of Tripura, Finance Department, New Secretariat complex, Capital Complex, P.S. Capital Complex, West Tripura - 799006

**3.THE COMMISSIONER OF TAXES**

(Revisional Authority), Government of Tripura, Finance (Excise and Taxation) Department, P.N. Complex, Gukhabasti, P.S. Capital Complex P.O. - Kunjaban, Agartala, Tripura West- 799006.

**4.THE SUPERINTENDENT OF TAXES**

Tax Audit Cell, Government of Tripura, Finance (Excise and Taxation) Department, P.N. Complex, Gukhabasti, P.S. Capital Complex, P.O. - Kunjaban, Agartala, Tripura West -799006

**5.THE SUPERINTENDENT OF TAXES, Charge - VII,**

Finance (Excise and Taxation) Department, Palace Compound, P.S. East Agartala, P.O.- Agartala, Tripura West - 799001

..... *Respondent(s)*.

**BEFORE**

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**  
**HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY**

For Petitioner(s) : Mr. Biplabendu Roy, Advocate.  
For Respondent(s) : Mr. A. Nandi, Advocate.  
Date of hearing and  
Judgment & Order : **2<sup>nd</sup> March, 2021.**  
Whether fit for reporting : NO

**JUDGMENT AND ORDER(Oral)**

*(Akil Kureshi, CJ)*

Petitioner has challenged an order dated 20<sup>th</sup> April, 2017 passed by the Superintendent of Taxes, Government of Tripura by which the said authority demanded Rs.2,75,851/- from the petitioner for assessment period 2010 – 11 and Rs.3,98,354/- for assessment period 2011 – 12 by way of additional value added tax under Tripura Value Added Tax Act, 2004 (TVAT Act, for short). The petitioner had imported several items, such as Glow Mint Moisturiser, Glow Fair Moisturiser etc. claiming that these items were in the nature of ayurvedic medicines and drugs on which according to the Schedule-II(a) to TVAT Act, 5% duty would be attracted. The department however, holds the belief that these items were in the nature of cosmetics and toilet articles which according to Entry No.45 to Schedule -II(b) of the Act, the rate of duty would be 12.5 percent to 14.5 percent as fixed by the Government from time to time.

[2] On 25.03.2014, Superintendent of Taxes, Tax Audit Cell had passed an order of assessment for the said assessment period of A/Y 2010 – 11 and A/Y 2011 – 12. After issuing notice to the petitioner on this disputed item, he confirmed the duty demands holding that the imported goods would be classified under Entry-45 of Schedule-II(b) as cosmetics. The petitioner thereupon filed a revision petition before the Commissioner, who passed an order dated 25.07.2015 remanding assessment order 25.03.2014 in which he set aside the assessment for both the years and remanded the proceedings before the Assessing Authority for making a fresh assessment after examining whether the products would fall within the expression medicines or drugs or cosmetics. The

Assessing Officer thereupon passed a fresh order dated 20.04.2017 in which he observed as under:

“The instant case is taken up as per order vide No. Rev. Case No. 06 &07/CH-VII of 2014/487-89 dated 06/10/2015 of the Revisional Authority (Commissioner of Taxes). According notice vide No. 571 dated 07. 01. 2015 issued to the dealers for re-assessment purpose. But, the dealer did not appear. Thereafter, issued another notice vide No.208 dated 20.12.2016 for appearing on 31.10.2016. At this time, the dealer submitted an application for seeking of time on 27.12.2016. Accordingly considering the prayer of the dealer, issued notice vide no.231 dated 17.01.2017 for appearing on 30.01.2017. Accordingly Sri N.C Paul, Advocate of the firm appears and requested adjourn the case upto 09.02.2017 and accordingly his submission was granted.

On 09.02.2017 Sri N. C. Paul, Advocate appears and stated that for 1st few years Glamour World Ayurvedic Co. Ltd. Kolkata is not sending the listed products as requested them to provide sample vide letter No. 995 dated 04.02.2016. Sri Paul Advocate also stated that there was no direction by the Revisional Authority to give sample of the listed items from the petitioner, But , it is appeared from the order vide No. Rev. Case No. 06 & 07/CH-VII of 2014/487-89 dated 06.10.2015 that the Ld. Revisional Authority directed to the petitioner to co-operate with Assessing Authority in conducting the twin tests as well as re-assessment in the instant cases. Though the dealer provided two nos of samples namely Glow Moiste and Glow Clean which have crossed the expiry date vide letter dated 25.04.2016.

**Since, the dealer did not provide the samples of the items in questions twin tests of the samples of the items could not be sent to the Dy. Drug controller, Govt. of Tripura for twin tests to ascertain whether there cosmetics or medicines. However, the dealer was given opportunity to produce documentary evidence in support of his claim that the items in questions are medicine not cosmetics. Since, the dealer fails to produce the documentary evidence in support of his claim, I am of the opinion that the items in questions are cosmetics’ as determined in the original assessment order dated 25.03.2014 and computation of tax payable by the dealer in imposition of penalty U/s 31(5) of the TVAT Act & Interest U/S 45 of the Act stand as assessment order dated 25.03.2014 which are under:\*\*\*\*\*”**

[3] This order the petitioner has challenged in the present petition. Learned counsel for the petitioner submitted that the Tax Audit Officer had no authority to make assessment. Subsequent order of assessment which is challenged in this petition was without sending the samples for chemical analysis. The entire order is bad in law. The petitioner had imported drugs and medicines, the assessment order may be set aside.

[4] Mr. A. Nandi, learned counsel for the department opposed the petition contending that the petitioner did not produce any samples for chemical analysis. The Assessing Officer therefore, had no choice but to proceed without the aid of such chemical analysis. All the names of the substances imported by the petitioner clearly suggest that they were in the nature of cosmetics. The petitioner did not produce any evidence to show that the same were drugs. He submitted that if the petitioner was dealing in drugs it ought to have a license for such purpose. No such license was produced.

[5] Ordinarily, once an order of assessment is passed under taxing statute, the Court would insist that the assessee who is aggrieved by such an order file statutory appeal. However, since the petition was admitted in 2017, we may at this stage not relegate the petition to the appeal remedy. We would therefore, confine our inquiry into only legal questions. The previous order of assessment was passed by Tax Audit Officer. However, this order was set aside by the Commissioner and the assessments were re opened. The fresh order of assessment which the petitioner has challenged in this petition has not been passed by the Tax Audit department and the petitioner's this ground does not survive.

[6] Coming to the central issue of the items imported by the petitioner, it is undisputed that the petitioner had imported the said goods from one **Glamour World** and the list of items imported read as under :

SL. No.	Product Name	Remarks
1	SOMI'S SHINE AND YOUNG	
2	GLOW MIST MOISTURISER	
3	GLOW FAIR MOISTURISER	
4	SOMI'S SHINE GUARD	
5	SLOW SHINE SOLUTION	
6	GLOW Y OUNG MOISTURISER	
7	SOMI'S SHINE AND CLEAN	

8	GLOW FAIR SOLUTION	
9	GLOW SAFE SUN SCREEN LOTION	
10	SOMI'S SHINE AND BRIGHT	
11	SOMI'S SHINE AND MINT	
12	GLOW HAIR SOLUTION	
13	GLOW & GLOW	
14	GLOW SHINE	
15	GLOW SAFE	
16	GLOW FRESH	
17	GLOW CLEAN	
18	GLOW MOIST	
19	GLOW SLIM	
20	GLOW ACTIVE	
21	GLOW HAIR SHAMPOO	
22	SOMI'S GLOW PLUS SOLUTION	

[7] The names of the products suggest they are all in the nature of cosmetics. These products are moisturisers, fair skin solutions, hair solutions for better glow etc. One of them is plain and simple shampoo for glowing hair. Even the supplier is aptly described as Glamour World. It is of course unsafe to base our conclusions on the basis of a title of the product. However, the petitioner himself has brought about the situation since as noted by the Assessing Officer despite opportunity been given, the petitioner failed to provide samples which could be sent for chemical analysis. We have on record a letter dated 04.02.2016 written by the Superintendent of Taxes to the petitioner asking the petitioner to provide samples of such products. His recording of the order that despite opportunities, the petitioner did not supply the samples, cannot be disputed without any firm basis for the same.

[8] In the result, petition is dismissed. Pending application(s), if any, also stands disposed of.

**(S. G. CHATTOPADHYAY),J.**

**(AKIL KURESHI),CJ.**